

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 15, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

HD SUPPLY FACILITIES  
MAINTENANCE, LTD.,

Plaintiff,

v.

BRANDON SHOWERS and MARK  
ARLAND,

Defendants.

No. 2:24-CV-00179-MKD

ORDER GRANTING STIPULATED  
MOTION FOR PROTECTIVE  
ORDER AND PROTECTIVE  
ORDER

**ECF No. 51**

Before the Court is the parties' Stipulated Amended Protective Order, ECF No. 51. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order protecting certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Amended Protective Order, **ECF No. 51**, is **GRANTED**.

**PROTECTIVE ORDER**

**I. INTRODUCTION**

In order to facilitate the exchange of information and documents which may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties hereby stipulate to the following Stipulated Amended Protective Order (hereinafter “Stipulated Amended Protective Order”):

**II. PROTECTED INFORMATION**

**A. Purpose and Limitations.**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. In the course of finding a mutually agreeable resolution in this action, Plaintiff HD Supply Facilities Maintenance, Ltd. and Defendants Brandon Showers and Mark Arland (collectively the “Parties”) intend to exchange protected information that may cause harm to the Plaintiff, including non-public and proprietary business information, if disclosed. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Amended Protective Order. The Parties acknowledge that this agreement is consistent with Local Rules for the United States District Court for the Eastern District of Washington.

This Stipulated Amended Protective Order, however, does not confer blanket protection on all disclosures or responses to discovery, the protection it

1 affords from public disclosure and use extends only to the limited information or  
2 items that are entitled to confidential treatment under the applicable legal  
3 principles, and it does not presumptively entitle parties to file confidential  
4 information under seal.

5 B. “CONFIDENTIAL” Material.

6 “Confidential” material shall include the following documents and tangible  
7 things produced or otherwise exchanged: (a) Non-public financial, accounting,  
8 employment, banking, medical, commercial (including but not limited to contracts,  
9 agreements, and other non-public corporate documents), proprietary data or  
10 applications, or other proprietary or trade secret information of the parties or their  
11 employers; (b) Non-public financial, accounting, commercial, proprietary data or  
12 applications, or other private or confidential information of any current or former  
13 customer, holding company, parent company, owner, subsidiary, employer, or  
14 business partner of the parties; (c) Information over which the designating party is  
15 obligated to maintain confidentiality by law, contract, or otherwise; and (d)  
16 Material and information the parties agree is confidential in nature, or as otherwise  
17 ordered by the Court.

18 C. Scope of Agreement.

19 The protections conferred by this agreement cover not only confidential  
20 material (as defined above), but also (1) any information copied or extracted from

1 confidential material; (2) all copies, excerpts, summaries, or compilations of  
2 confidential material; and (3) any testimony, conversations, or presentations by  
3 parties or their counsel that might reveal confidential material.

4 Any document encompassing the above information shall similarly be  
5 deemed confidential information subject to this Stipulated Amended Protective  
6 Order. Additional information may be later identified which shall also be  
7 considered confidential and such information shall be given similar protections  
8 pursuant to a later filed Stipulated Protective Order as specifically designated by  
9 and agreed to by the Parties during the course of this matter.

10 However, the protections conferred by this agreement do not cover  
11 information that is in the public domain or becomes part of the public domain  
12 through trial or otherwise.

### 13 **III. DESIGNATION OF PROTECTED INFORMATION**

14 A. Application to Parties and Non-Parties: The Parties agree, at this  
15 time, that the disclosure of protected information shall be limited to the Plaintiff,  
16 Defendants, Brandon Showers and Mark Arland, and Non-Parties Jay Onchi, Sales  
17 Manager for Waxie/BradyPLUS, and Barbara Salinas, counsel for BradyPLUS  
18 (Defendants and Non-Parties hereafter “Receiving Parties”). Before each  
19 Receiving Party is given access to the designated information as permitted  
20 hereunder, each must first sign the acknowledgment to be bound to these terms that

1 is attached hereto as Exhibit A and provide a copy of the signed acknowledgment  
2 to Plaintiff. Defendants may during the course of this matter identify additional  
3 individuals to become Receiving Parties and will promptly notify Plaintiff's  
4 counsel of such individuals and, following written approval of Plaintiff's counsel  
5 for this individual, submit the required acknowledgment prior to providing access  
6 to any information protected by this agreement. Approval of an individual  
7 identified by Defendants will not be unreasonably withheld or delayed during the  
8 course of this matter.

9 B. Manner of Designation: Information may be designated hereunder at  
10 any time and in any reasonable manner or method that notifies of the designation  
11 level and identifies with specificity the information to which the designation  
12 applies. The designating party must affix the word "CONFIDENTIAL" to each  
13 page that contains confidential material or electronic image. If only a portion or  
14 portions of the material on a page qualifies for protection, the producing party also  
15 must clearly identify the protected portion(s) (e.g., by making appropriate  
16 markings in the margins).

17 C. Exercise of Restraint and Care in Designating Material for Protection.  
18 The Designating Parties that designate information or items for protection under  
19 this agreement must take care to limit any such designation to specific material that  
20 qualifies under the appropriate standards. The designating party must designate for

1 protection only those parts of material, documents, items, or oral or written  
2 communications that qualify, so that other portions of the material, documents,  
3 items, or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited.  
6 Designations that are shown to be clearly unjustified or that have been made for an  
7 improper purpose (e.g., to unnecessarily encumber or delay the case development  
8 process or to impose unnecessary expenses and burdens on other parties) expose  
9 the designating party to sanctions. If it comes to a designating party's attention  
10 that information or items that it designated for protection do not qualify for  
11 protection, the designating party must promptly notify all other parties that it is  
12 withdrawing the mistaken designation.

13 D. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
14 failure to designate qualified information or items does not, standing alone, waive  
15 the designating party's right to secure protection under this agreement for such  
16 material. Upon timely correction of a designation, the receiving part(ies) must  
17 make reasonable efforts to ensure that the material is treated in accordance with the  
18 provisions of this agreement.

1       **IV. CHALLENGES TO DESIGNATED INFORMATION**

2           A.    Timing of Challenges. Any party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a designating party's  
4 confidentiality designation is necessary to avoid foreseeable, substantial  
5 unfairness, unnecessary economic burdens, or a significant disruption or delay of  
6 the litigation, a party does not waive its right to challenge a confidentiality  
7 designation by electing not to mount a challenge promptly after the original  
8 designation is disclosed.

9           B.    Meet and Confer. The parties must make every attempt to resolve any  
10 dispute regarding confidential designations without court involvement. Any  
11 motion regarding confidential designations or for a protective order must include a  
12 certification, in the motion or in a declaration or affidavit, that the movant has  
13 engaged in a good faith meet and confer conference with other affected parties in  
14 an effort to resolve the dispute without court action. The certification must list the  
15 date, manner, and participants to the conference. A good faith effort to confer  
16 requires a video or telephone conference.

17           C.    Judicial Intervention. If the parties cannot resolve a challenge without  
18 court intervention, the designating party may file and serve a motion to retain  
19 confidentiality under Local Civil Rule 7. The burden of persuasion in any such  
20 motion shall be on the designating party. Frivolous challenges, and those made for

1 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
2 on other parties) may expose the challenging party to sanctions. All parties shall  
3 continue to maintain the material in question as confidential until the court rules on  
4 the challenge.

5 **V. LIMITED ACCESS/USE OF PROTECTED INFORMATION**

6 A. Restricted Use: Information that is produced or exchanged in the  
7 course of this action and designated under this Order may be used solely for this  
8 litigation and settlement negotiations, and for no other purpose. No designated  
9 information may be disclosed to any person except in accordance with the terms of  
10 this Order. All persons in possession of designated information agree to exercise  
11 reasonable care with regard to the custody, use, or storage of such information to  
12 ensure that its confidentiality is maintained. Any use or disclosure of Confidential  
13 information that is determined by the Court to violate the terms of this Order may  
14 subject the disclosing person or party to sanctions, or other appropriate relief as  
15 determined by the Court.

16 B. Access to “Confidential” Information: The Parties and all persons  
17 subject to this Order agree that information designated as “CONFIDENTIAL” may  
18 only be physically possessed by Counsel of record for Plaintiff and Defendants.  
19 Furthermore, the Parties and all persons subject to this Order agree that  
20 information designated as “CONFIDENTIAL” may be viewed by the Non-Parties,



1 so long as each has signed the acknowledgment to be bound to these terms that is  
2 attached hereto as Exhibit A and provided a copy to Plaintiff prior to viewing the  
3 information.

4 C. Non-Waiver Effect of Designations: Neither the taking of, nor the  
5 failure to take, any action to enforce the provisions of this Order, nor the failure to  
6 object to any designation, will constitute a waiver of any party's claim or defense  
7 in this action or any other action or proceeding, including but not limited to a claim  
8 or defense that any designated information is or is not confidential, is or is not  
9 entitled to particular protection, or embodies or does not embody information  
10 protectable by law.

11 Nothing in this Order shall be construed as a waiver by a party of any  
12 objections that may be raised as to the admissibility at trial of any evidentiary  
13 materials.

## 14 VI. DURATION/CONTINUED RESTRICTIONS

15 A. Handling of Designated Information Upon Conclusion of This  
16 Litigation: Within 60 days after the termination of the litigation, including all  
17 appeals, the Receiving Party(ies) must certify to the producing party that all  
18 designated information hereunder has been destroyed. Notwithstanding this  
19 provision, Counsel of record for the parties as of the date of filing of this Stipulated  
20 Amended Protective Order may retain copies of any part of the Confidential

1 material produced by others that has become part of counsel's official file of this  
2 litigation as well as abstracts or summaries of materials that reference Confidential  
3 material that contain counsel's mental impressions or opinions for the period of  
4 any restriction agreed upon by the parties through settlement. Such archival copies  
5 shall remain subject to the terms of this Stipulated Amended Protective Order.

6 B. Continued Restrictions Under this Order: The confidentiality  
7 obligations imposed by this agreement shall remain in effect until a designating  
8 party agrees otherwise in writing or a court orders otherwise.

9 **VII. PROTECTED INFORMATION SUBPOENAED OR ORDERED**  
10 **PRODUCED IN OTHER LITIGATION**

11 If a party is served with a subpoena or a court order issued in other litigation  
12 that compels disclosure of any information or items designated in this action as  
13 "CONFIDENTIAL," that party must:

- 14 (a) promptly notify the designating party in writing and include a copy of  
15 the subpoena or court order;  
16 (b) promptly notify in writing the party who caused the subpoena or order  
17 to issue in the other litigation that some or all of the material covered by the  
18 subpoena or order is subject to this agreement. Such notification shall  
19 include a copy of this agreement; and  
20

1 (c) cooperate with respect to all reasonable procedures sought to be  
2 pursued by the designating party whose confidential material may be  
3 affected.

#### 4 **VIII. REQUESTS TO SEAL PROTECTED INFORMATION**

5 This protective order does not authorize a party to file or maintain a  
6 document under seal.

7 Before filing confidential material or discussing or referencing such material  
8 in court filings, the filing party shall confer with the designating party to determine  
9 whether the designating party will remove the confidential designation, whether  
10 the document can be redacted, or whether a motion to seal or stipulation and  
11 proposed order is warranted. The party designating material as confidential shall  
12 have the burden of moving to seal and complying with the Federal Rules of Civil  
13 Procedure and any applicable Local Rule for the United States District Court for  
14 the Eastern District of Washington.

#### 15 **IX. PRIVILEGE/WORK PRODUCT**

16 Pursuant to Fed. R. Evid. 502(d), the production of any documents,  
17 electronically stored information (ESI) or information, whether inadvertent or  
18 otherwise, in this proceeding shall not, for the purposes of this proceeding or any  
19 other federal or state proceeding, constitute a waiver by the producing party of any  
20 privilege applicable to those documents, including the attorney-client privilege,

1 attorney work-product protection, or any other privilege or protection recognized  
2 by law. This Order shall be interpreted to provide the maximum protection  
3 allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not  
4 apply. Nothing contained herein is intended to or shall serve to limit a party's right  
5 to conduct a review of documents, ESI or information (including metadata) for  
6 relevance, responsiveness and/or segregation of privileged and/or protected  
7 information before production. Information produced in discovery that is protected  
8 as privileged or work product shall be immediately returned to the producing party.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
10 Order and provide copies of this order to counsel.

11 **DATED** November 15, 2024.

12 *s/Mary K. Dimke*  
13 MARY K. DIMKE  
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
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20

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

HD SUPPLY FACILITIES  
MAINTENANCE, LTD.,

Plaintiff,

v.

BRANDON SHOWERS and MARK  
ARLAND,

Defendants.

Case No. 2:24-cv-00179-MKD

**ACKNOWLEDGMENT AND**  
**AGREEMENT TO BE BOUND BY**  
**PROTECTIVE ORDER**

I \_\_\_\_\_, [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read the entirety and understand the Stipulated  
Amended Protective Order that was issued by the United States District Court for  
the Eastern District of Washington on \_\_\_\_\_ [date] in the case of *HD*  
*Supply Facilities Maintenance, Ltd. v. Brandon Showers, et al.*, Case No. 2:24-cv-  
00179-MKD. I agree to comply with and to be bound by all the terms of this  
Stipulated Amended Protective Order, and I understand any use or disclosure of  
Confidential information that is determined by the Court to violate the terms of this  
Order may subject the disclosing person or party to sanctions, or other appropriate

1 relief as determined by the Court. I solemnly promise that I will not disclose in  
2 any manner any information or item that is subject to this Stipulated Amended  
3 Protective Order to any person or entity except in strict compliance with the  
4 provisions of the Stipulated Amended Protective Order.

5 I further agree to submit to the jurisdiction of the United States District  
6 Court for the Eastern District of Washington for the purpose of enforcing the terms  
7 of this Stipulated Amended Protective Order, even if such enforcement  
8 proceedings occur after termination of this action.

9 Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Company and Title)